BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Joint Application of Utility Pipeline, Ltd., Cobra Pipeline Company, Ltd., and Knox Energy Cooperative Association, Inc. to Substitute Natural Gas Service and Transfer Assets to Customers	))))))	Case No. 21-0803-GA-ATR

NORTHEAST OHIO NATURAL GAS CORP.'S INITIAL COMMENTS

I. INTRODUCTION

According to the Application, Cobra[1] is seeking to sell its natural gas pipeline systems and natural gas taps, along with substantially of its assets used in the operation of its business (collectively, the "Assets"), to UPL[2], who, in turn, is seeking approval from the Commission to assign its interest in the Assets to Knox[3], an unregulated cooperative (collectively, the "Transaction").

Although NEO[4] does not oppose the sale of Assets and transfer of customers from Cobra to UPL, NEO strongly opposes the assignment of the Assets and customers from UPL to Knox, because it is unreasonable and not in the public interest. The Joint Applicants have failed to demonstrate that the assignment will result in uninterrupted and adequate gas service to Cobra's existing customers. As submitted, the Application forces captive customers of Cobra to become members of an unregulated cooperative without providing even the method by which their service rates will be calculated or otherwise determined and without any regulatory oversight from the Commission over their future terms of service. Similarly, the Application is unreasonable and

[1] Cobra Pipeline Company, Ltd. ("Cobra")
[2] Utility Pipeline, Ltd. ("UPL")
[3] Knox Energy Cooperative Association Inc. ("Knox")
[4] Northeast Ohio Natural Gas Corp. ("NEO")

fails to protect the public interest because captive customers could face unreasonable and arbitrary rate increases without any due process or protection from the Commission or any other regulatory body.

Of particular concern, Knox and UPL have consistently refused to provide basic information that would help the Commission and intervenors understand the nature and mechanics of the proposed Transaction, including its potential impact on Cobra's current customers. Indeed, Joint Applicants have refused to provide copies (redacted or unredacted) of the underlying agreements that are the subject of Commission approval for this Transaction. Similarly, Joint Applicants have refused to provide proposed rate schedules, the management contract between UPL and Knox that is extensively referenced and discussed throughout the Application, substantive information or documentation evincing the managerial, technical, and financial capability of Knox and UPL, and details regarding how, when, and under what conditions Knox will pay UPL for the assignment of the Assets and customers to Knox.

In sum, because the proposed Transaction is unreasonable, not in the public interest, and will not ensure adequate and uninterrupted service to captive customers, the Commission must deny the Application or, at a minimum, consider the transfer of Assets from UPL to Knox at a later date once more information about the Transaction has been provided to the Commission.

II. COMMENTS

A. The Commission is authorized under R.C. 4905.05 to deny the Application or, at a minimum, impose specific conditions on merger/transfer approval to protect consumers.

Section 4905.05, Ohio Revised Code ("R.C.") grants the Commission the power to review, modify, and/or approve a proposed merger or transfer involving one or more regulated entities. As set forth below, the Commission may (and often does) condition merger/transfer approval on

the applicants' meeting specific prerequisites or conditions designed to insulate customers from the ill-effects any proposed merger or transfer of assets.

For example, pursuant to R.C. 4905.05, the Commission has previously conditioned approval of mergers between natural gas companies on the satisfaction of certain specified conditions. In Case No. 18-1027-GA-UNC, Staff recommended, and the Commission adopted, various conditions for approval of a merger between Vectren Energy Delivery of Ohio ("VEDO") and CenterPoint Energy.[5] Specifically, the Commission conditioned merger approval on VEDO (i) not seeking recovery of transactions costs[6] from Ohio customers; (ii) providing testimony and schedules to identify any transition costs[7]; (iii) maintaining VEDO's level of investment in its Ohio infrastructure; (iv) continuing VEDO's capital investment plans; and (v) notifying the Commission of material changes in VEDO's then-existing accounting practices.[8]

Similarly, in Case No. 96-991-GA-UNC, the Commission approved a merger between The East Ohio Gas Company and West Ohio Gas Company subject to specific conditions. Specifically, the Commission conditioned merger approval on East Ohio (i) conducting an extensive review of East Ohio and West Ohio's respective tariffs to assemble an improved combined tariff; (ii) submitting an application for approval of the combined tariff within ninety (90) days of the Commission order approving the merger; and (iii) ensuring that the terms and conditions for transportation services be consistent throughout the combined service territory.[9] Once again, the

[5] *In re Merger Involving The Parent Company of Vectren Energy Delivery of Ohio, Inc.*, Case No. 18-1027-GA-UNC, ¶ 16 (January 30, 2019).
[6] Transaction costs refer to the costs incurred to structure, negotiate, and execute the transaction; professional services fees, including investment banker fees, counsel fees, audit fees, accounting fees, and the like; and direct internal labor and external services needed to evaluate the merger, negotiate its terms, obtain regulatory approvals, obtain shareholder approvals, and execute transaction contracts. *Id*. at ¶ 8.
[7] Transition costs refer to costs that are related to or incurred as a result of the merger, such as costs to combine, integrate or align the parties following the merger. *Id*.
[8] *Id.*
[9] *In re Application of the East Ohio Gas Company and West Ohio Gas Company*, Case No. 96-991-GA-UNC, Finding and Order, (Dec. 19, 1996), ¶¶ 14–16.

Commission did not simply rubberstamp merger approval, but instead carefully dissected the application, scrutinized the applicants' assertions, and imposed specific and substantive conditions on the merger – all in the interest of protecting customers.

In sum, the Commission has a well-established history of carefully scrutinizing merger/asset transfer applications by imposing specific and substantive conditions on Commission approval for the benefit and protection of customers. Thus, consistent with the foregoing precedent, pursuant to R.C. 4905.05, the Commission may not only reject the Application outright (which it should as explained below), but it may also impose specific conditions on the Transaction to ensure, at a minimum, that it is reasonable, within the public interest, and will continue to afford existing Cobra customers uninterrupted and adequate gas service.

B. The Transaction set forth in the Application is unreasonable, not in the public interest, and will not ensure uninterrupted and adequate service to Cobra's existing customers as the Commission requires.

1. When assessing whether a proposed merger/transfer should be approved pursuant to R.C. 4905.05, the Commission has traditionally examined a variety of considerations designed to protect customers.

In exercising its statutory authority under R.C. 4905.05, the Commission has entertained a variety of important considerations – all of which are especially relevant here where the Transaction, if approved, will strip thousands of Ohio customers of critical regulatory protection from this Commission since Knox, as a cooperative, is not regulated by the Commission (*i.e.*, outside of pipeline safety).

At a high level, the Commission has traditionally examined whether regulatory approval of the proposed transaction will continue to allow customers to receive uninterrupted and adequate service, usually through an analysis of the proposed transferee's financial, technical, and

managerial abilities.[10] Similarly, the Commission also analyzes whether the proposed transaction is reasonable and in the public interest.[11] However, on a more granular level, the Commission has also scrutinized whether the applicants seeking merger/transfer approval: (1) provide strong, tangible evidentiary bases to support merger/transfer approval rather than offering mere "vague conclusions"; (2) accept affirmative obligations to improve infrastructure rather than offering generic, non-committal statements of intent; (3) provide proper notice to customers and specificity of proposed transition plans; (4) will change the rates charged to existing customers; and (5) plan to execute an assignment agreement before or after customers become members of the cooperative to ensure the public can advocate for their own interests once the Commission is deprived of jurisdiction.[12]

As set forth in more detail below, the Joint Applicants largely ignore the foregoing considerations by refusing to provide the information or documentation needed to meaningfully assess these considerations. Consequently, consistent with historical practice, the Commission should deny the Application or, at a minimum, consider the sale or transfer of Assets from UPL to

[10] *In re Eastern Natural Gas Company and Village Energy Cooperative Association, Inc.*, Case No. 18-369-GA-ATR, Finding and Order (Sept. 23, 2020), ¶ 17.
[11] *See, e.g., In the Matter of the Application of Northern Industrial Energy Development, Inc. and Knox Energy Cooperative Association, Inc. to Substitute Natural Gas 11 Delivery Service and Transfer Assets and Customers*, Case No. 05-1267-GA-ATR, Finding and Order, (Dec. 14, 2005), ¶ 10; *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of a Transfer of Facilities and Customers, and a Transportation Agreement with Utility Pipeline Ltd.*, Case No. 04-1417-GA-ATR, Finding and Order (Feb. 2, 2005), ¶ 11.
[12] *In re Eastern Natural Gas Company and Village Energy Cooperative Association, Inc.*, Case No. 18-369-GA-ATR, Finding and Order (Sept. 23, 2020), ¶ 32.

Knox at a later date once more information about the Transaction has been provided to the Commission and to intervenors.

2. The Commission must deny the Application because it lacks the essential facts necessary to evaluate whether the Transaction is reasonable, in the public interest, and will allow customers to continue receiving uninterrupted and adequate service.

If the Commission lacks sufficient record evidence to evaluate the foregoing considerations, the Commission cannot approve the proposed transaction. Here, the Commission should deny the Application because Joint Applicants have declined to offer any actual evidence that would corroborate, verify, or otherwise support the conclusory statements that the Transaction will benefit customers, enable the improvement Cobra's pipeline system infrastructure, and expand access to underserved rural areas.

a. <u>The Commission should deny the Application because Knox and UPL omitted and have refused to provide a copy of the underlying Management Agreement or the Assignment Agreement</u>.

When the Commission evaluates applications for proposed mergers or transfers of assets, the Commission will routinely review the underlying purchase/sale agreement that is the subject of regulatory approval before it renders a decision.[13]

Joint Applicants have not provided a copy of the proposed draft assignment agreement between UPL and Knox ("Assignment Agreement") despite extensively referencing the assignment throughout the Application and in supporting testimony.[14] In discovery, UPL/Knox explained that they were "still negotiating the parameters of the assignment."[15] Curiously,

[13] *See, e.g.*, *In re Transfer of Monongahela Power Company's Certified Territory*, Case No. 05-765-EL-UNC, Opinion and Order (Nov. 9, 2005), *30; *In re Joint Application of Northeast Ohio Natural Gas Corp*., Case No. 19-1921-PL-ATR, Opinion and Order (Dec. 4, 2019), ¶ 8; *In re Matter of the Joint Petition of West Ohio Gas Company and Columbia Gas of Ohio, Inc*., Case No. 90-1492-GA-ATR, Opinion and Order (Dec. 13, 1990), ¶ 5; *In the Matter of Application of Columbia Gas of Ohio, Inc. For Approval of a Transfer*, Case No. 04-1417-GA-ATR, Opinion and Order (Feb. 2, 2005), ¶ 1.
[14] Joint Application, pp. 1, 9, 12, 13.
[15] Knox and UPL's Response to NEO's First Set of Discovery Requests, Response to Interrogatory No. 2.

however, in response to different discovery requests concerning how the assignment would work, UPL/Knox confirmed that the "assignment will take place immediately after the acquisition of the Systems" and that the "assignment will go into effect before current Cobra customers apply to become members of Knox", which suggests that at least some parameters have indeed been established.[16] But again, without even a copy of the draft Assignment Agreement to review, there is no way for the Commission and intervenors to assess whether the Transaction as proposed in the Application is reasonable, in the public interest, and/or will assure uninterrupted or adequate service to existing Cobra customers.

Additionally, Joint Applicants have refused to produce the existing management agreement between Knox and UPL ("Management Agreement"). In response to NEO's request for production of all contracts related to the operation of the Assets, the Joint Applicants admitted that while the Management Agreement existed, they would not produce it to NEO "because NEO is a competitor of UPL's subsidiaries, and NEO lacks any basis to use this proceeding to obtain highly sensitive and confidential information about UPL's business, particularly because that information is not relevant to NEO's interests in this case."[17] On the contrary, the Commission has no way to determine whether the arrangement between UPL and Knox will result in uninterrupted and adequate service without knowing the terms of the Management Agreement.

Without these agreements, there is no way to evaluate how the purchase price of the Assets will be recovered from Knox customers or, more generally, how the Transaction will be financed. In discovery, NEO asked UPL/Knox to identify what "financing" will be provided to Knox as indicated on page 12 of the Application. First, UPL/Knox claimed there were no financing agreements between Knox and UPL, which only further underscores the dearth of evidence

[16] Knox and UPL's Response to NEO's First Set of Discovery Requests, Response to Interrogatory Nos. 22, 6.
[17] Knox and UPL's Response to NEO's First Set of Discovery Requests, Response to Request for Production No. 2.

supporting the Application.[18] Further, UPL/Knox generically claimed, without any additional information or responsive documentation, that "financing is in the form of UPL's responsibility for the purchase price of the Systems and the capital expenditures and maintenance thereof."[19] But UPL/Knox never explain (and refuse to provide) the details concerning how the Transaction will be financed (*e.g.,* who pays what/when/how much, how costs will be recovered and on what terms, etc.), which is particularly relevant when assessing the financial capability of the joint applicants as discussed in more detail below.

b. The Commission should deny the Application because it provides nothing more than generic, conclusory, and self-serving assertions in support of Application approval.

When applying the foregoing considerations, it is obvious that Joint Applicants have failed to meet their burden of proof in support of Application approval. Indeed, the Application offers nothing more than generic assurances that the Transaction is reasonable, consistent with the public interest, and beneficial to customers. Without any tangible evidence to bolster their self-serving assertions, the Commission should find that the Application is unreasonable, not in the public interest, and will not ensure uninterrupted and adequate service to Cobra's existing customers. A recent Commission order is instructive.

In Case No. 18-369-GA-ATR, the Commission reviewed the proposed transfer of assets and customers from Eastern Natural Gas Company ("Eastern") to Village Energy Cooperative Association, Inc. ("Village").[20] Within the joint application, Eastern and Village asserted that it would be more efficient and would improve service to customers if Village was to own the assets

[18] Knox and UPL's Response to NEO's First Set of Discovery Requests, Response to Request for Production No. 9.
[19] Knox and UPL's Response to NEO's First Set of Discovery Requests, Response to Interrogatory No. 21.
[20] *In re Eastern Natural Gas Company and Village Energy Cooperative Association, Inc.*, Case No. 18-369-GA-ATR, Finding and Order (Sept. 23, 2020), ¶ 1.

used to provide service.[21] Village expressed an intent to change the current rates for Eastern customers by lowering the residential monthly charge and converting it to a consumption-based charge, which Village claimed would reduce fees for the average residential customer.[22] After reviewing the joint application and the sparse evidentiary record, the Commission declined to approve the proposed transaction, finding it to be unreasonable and not in the public interest. Specifically, the Commission held:

> In their Joint Application and response, Joint Applicants assert vague conclusions that Village and Eastern believe this transfer will create efficiency and improve service. The Commission has not been presented with any information to support these conclusory assertions. For example, the Joint Application fails to explain what efficiency would be created as a result of moving the approximately 6,500 Eastern customers to Village, a cooperative that currently only serves 1,377 customers. Additionally, Joint Applicants fail to explain how this transfer would improve service. Specifically, Joint Applicants state that cooperatives such as Village "are better able to improve service and extend service to new areas," but do not explain how Village will accomplish such.[23]

Similarly, here, Joint Applicants have failed to provide any tangible evidence to support the Application. Just like *In re Eastern*, the Application and supporting testimony is littered with vague, conclusory assertions. For example, Joint Applicants seek to assure the Commission that the Transaction is "the best option to ensure continued operations of the Cobra Systems," "ensures continued operation of all four Cobra Systems without interruption," "will permit required system repairs and upgrades," and "the proposed substitution of natural gas service and transfer of assets being contemplated by the parties will result in adequate and uninterrupted service, thus meeting the Commission's standard."[24]

[21] *Id.* at ¶ 19.
[22] *Id.* at ¶ 19.
[23] *Id*. at ¶ 32.
[24] Joint Application, pp. 11, 20.

Critically, however, Joint Applicants fail to provide any information supporting these threadbare assertions. In the course of discovery, both Knox and UPL refused to produce the terms of any of the underlying documents governing the Transaction,[25] stating merely that the Transaction "could provide an opportunity for expanded service."[26] Further, Knox and UPL declined to provide any information or identify any established parameters governing UPL's compensation, noting only that "volumetric charge assessed to Knox members is intended, but not guaranteed, to compensate UPL for its capital expenditures over time."[27]

Just as the joint applicants in *In re Eastern* failed to provide any substantive information to support their conclusory statements that service would be improved or that customers would benefit from the proposed transfer, Joint Applicants have failed to set forth any actual evidence supporting their own conclusory assertions in the Application. Without any tangible evidence, the Commission has no way to assess whether the Transaction is reasonable, within the public interest, or will continue to provide adequate and uninterrupted service to customers. Accordingly, unless and until Joint Applicants provide actual evidence to corroborate or otherwise support their conclusory assertions, the Application must be denied.

c. <u>The Application is unreasonable and not in the public interest because it offers nothing more than statements of intent to improve Cobra's existing infrastructure and to benefit customers.</u>

One of the most glaring parts of the Application concerns Joint Applicants' failure to assume any actual, substantive obligations to improve service and/or upgrade Cobra's outdated infrastructure. This is particularly relevant where, as here, the proposed transaction includes assets or infrastructure in desperate need of repair. In those situations, the Commission has found that

[25] Knox and UPL's Response to NEO's First Set of Discovery Requests, Response to Interrogatory No. 5.
[26] Knox and UPL's Response to NEO's First Set of Discovery Requests, Response to Interrogatory No. 11.
[27] Knox and UPL's Response to NEO's First Set of Discovery Requests, Response to Interrogatory No. 17.

mere statements of intent to improve infrastructure are insufficient to establish that the proposed transfer of assets is reasonable and in the public interest.

For example, the Commission in *In re Eastern* denied the application for asset transfer because (among other things) the joint applicants offered nothing more than empty promises to improve the structural integrity of the transferred assets once the Commission approved the transaction.[28] The Commission also determined that unless an affirmative obligation to improve service is provided, applicants' statements of intent are unenforceable and meaningless.[29] The Commission explained:

> The only somewhat tangible support for these conclusions comes from an assertion that Village "intends to invest capital into the Eastern system over the next three to five years to improve and upgrade the system and service levels beyond regulatory standards." The Commission believes that this statement of intent does not create an affirmative obligation to improve service. If Joint Applicants' statement is intended to constitute an affirmative obligation to improve service, the system improvement is planned to occur after a point when the Commission may have no jurisdictional authority to enforce such an obligation.[30]

The same is true here. The Application does not set forth any concrete plan that would require UPL and Knox to assume any affirmative obligation to improve Cobra's infrastructure. This is especially alarming where, as here, the proposed transaction at issue would deprive the Commission of any regulatory oversight to protect customers once approved. Instead, the Application merely avers that "UPL currently estimates that certain parts of the Systems will need work within the next twelve to eighteen months."[31] Concerned by the lack of detail in the Application and supporting testimony, NEO propounded discovery on UPL and Knox, seeking

[28] *In re Eastern Natural Gas Company and Village Energy Cooperative Association, Inc.*, Case No. 18-369-GA-ATR, Finding and Order (Sept. 23, 2020), ¶ 32.
[29] *Id.*
[30] *Id.*
[31] Joint Application, p. 17.

information and/or documentation regarding UPL's plan for system improvement.[32] In response, UPL and Knox admitted they did not have one: "[Knox/UPL] has not identified the specific projects that need to be performed on the systems in the next twelve to eighteen months. [Knox/UPL] is aware that the age of the systems and the general condition of the systems will require capital expenditures."[33]

Not only does this fail to constitute an affirmative obligation to improve service, but it also barely constitutes a statement of intent to improve Cobra's infrastructure. Absent a tangible plan with affirmative obligations to improve service, the Joint Applicants have failed to demonstrate that the transfer is reasonable and in the public interest.

d. The Application should be denied because the Joint Applicants have failed to provide any tangible evidence that current Cobra customers will not encounter unreasonable or arbitrary rate increases.

In determining whether the transaction is reasonable and in the public interest, the Commission will often consider whether the rates for existing customers will increase, or, at the very least, how those rates will be calculated if the proposed transaction is approved. Here, however, the Commission and intervenors are left guessing as to what current Cobra customer rates and terms of service will be if the Transaction is approved.

In discovery, NEO propounded numerous requests on UPL/Knox seeking information about the basic terms of service, including the potential for rate increases, not only for NEO's customers but also Knox's customers, if the Transaction was approved as proposed. For instance, NEO asked UPL/Knox to identify "the rates NEO will be charged immediately after the transaction

[32] Specifically, NEO asked Knox/UPL to identify the "work" that will be needed "within the next twelve to eighteen months." (Knox and UPL's Response to NEO's First Set of Discovery Requests, Response to Interrogatory No. 1). Knox/UPL could not do so, conceding that "it has not identified the specific projects that need to be performed on the Systems in the next twelve to eighteen months." *Id*.

[33] Knox and UPL's Response to NEO's First Set of Discovery Requests, Response to Interrogatory No. 2.

to Knox if it is approved."[34] Knox/UPL declined to provide any such information, claiming that "such rates are to be determined by future negotiations with the relevant parties."[35]

The sequencing of events in the proposed Transaction is critical to understanding why there is serious concern about the potential for unreasonable rate hikes. If the Application is approved, former Cobra customers who wish to continue receiving service from the Cobra pipeline system will ***not*** have the opportunity to join Knox's membership and negotiate a service agreement with Knox until ***after*** Commission approval.[36] The timing of this proposed arrangement is deeply concerning to NEO, as these "negotiations" will occur without any regulatory oversight from the Commission and without the statutory and regulatory protections Cobra customers currently enjoy.

For example, once approved, Knox could establish any rate it chooses for Cobra customers, secure in the knowledge that Knox and its other members will never have to pay those rates because they are a different class of customer (residential). This, in turn, exposes thousands of NEO's Ohio residential customers to untold and unchecked cost increases if the Transaction is approved. Such an outcome would be unreasonable and contrary to the public interest, particularly since no existing Cobra customer has requested membership in the Knox cooperative, which is understandable given the absence of any regulatory protection from the Commission.[37] Without knowing the rates or basic terms of service (or even the method by which the rates will be calculated), the Commission cannot properly determine whether this Transaction is reasonable and in the public interest. If approved, each Cobra customer will be forced to negotiate its own rate

[34] Knox and UPL's Response to NEO's First Set of Discovery Requests, Response to Interrogatory No. 7.
[35] *Id*.
[36] Knox and UPL's Response to NEO's First Set of Discovery Requests, Response to Interrogatory No. 13.
[37] Knox and UPL's Response to NEO's First Set of Discovery Requests, Response to Interrogatory No. 4. *See also* Case No. 18-369-GA-ATR ("The question of whether a utility customer may become a part owner of a cooperative without that customer's consent is not an issue before the Commission here. However, the public comments in this case cannot be understood to convey overwhelming support on behalf of a group of customers who are about to own a utility exclusively by and solely for themselves.")

with no justification based on traditional ratemaking principles (e.g., cost of service study). Further, there is no dispute resolution mechanism or other due process protections in place if Cobra customers disagree with the rates set by Knox.[38] Absent such information, it is impossible to find the Transaction as proposed is reasonable or in the public interest.

UPL dismisses these legitimate concerns by assuring the Commission that there is a natural limit to those rate increases because UPL can only increase rates consistent with the "contractual caps" set forth in a "management agreement between Knox and UPL".[39] But just like their refusal to provide the Assignment Agreement, UPL and Knox have refused to provide a copy of the "long-term management agreement" between UPL and Knox.[40] Instead, the Joint Applicants are essentially saying, "just trust us." In so doing, Joint Applicants are asking the Commission to effectively abdicate their regulatory responsibilities by approving a consequential transaction without any tangible evidence to show that it is reasonable, in the public interest, and capable of assuring uninterrupted and adequate service.

Importantly, the Commission has previously acknowledged the validity of such concerns. In *In re Eastern*, the Commission observed as follows:

> The assignment agreement in the Joint Application is to be executed prior to Eastern customers becoming partially controlling members of Village. As a result, neither the Commission nor the Eastern customers have any opportunity to weigh in or control the terms of the assignment agreement or duration of the associated volumetric adder. If the Joint Application were to be approved as presented, the Eastern customers would be unreasonably captive to these obligations without the ability to protect their own interests as members of the cooperative while the Commission is unable to protect their public interest as customers of a regulated distribution utility.[41]

[38] Knox and UPL's Response to NEO's First Set of Discovery Requests, Response to Interrogatory No. 15, Request for Production No. 6.
[39] Joint Application, p. 17.
[40] Knox and UPL's Response to NEO's First Set of Discovery Requests, Response to Request for Production No. 4.
[41] *In re Eastern Natural Gas Company and Village Energy Cooperative Association, Inc.*, Case No. 18-369-GA-ATR, Finding and Order (Sept. 23, 2020), ¶ 32.

Here, the Application similarly fails to ensure that existing Cobra customers have the ability to protect their own interests as members of the cooperative while the Commission is unable to regulate the terms of service or otherwise protect customers from unreasonable and arbitrary rate increases.

e. The Application should be denied because Joint Applicants have failed to provide a transition plan or detailed notices to advise customers of their rates and other material terms and conditions of service.

In many applications seeking approval to transfer assets/customers to an unregulated cooperative, applicants will include a transition plan or sample notices informing customers of their rights and obligations.[42] In some cases, as explained above, Commission approval is even conditioned on the provision of detailed notification to affected customers.[43] Here, however, the Application only includes a one-page notice,[44] which advises customers that the joint application was filed, but it provides no additional information as to service terms, rates, ownership, rights, obligations, or any additional details or example materials that would be distributed upon the approval of the Transaction. Without detailed information to include in customer notices, including, at a minimum, a description of the new service terms and rates of service, Cobra's affected customers do not have sufficient information to make informed decisions or to advocate for their interests. It is manifestly unfair, unreasonable and inconsistent with the public interest to approve the Transaction before thousands of customers would even know their essential terms of their service with Knox and without any regulatory oversight from the Commission.

[42] *See In re Columbia Gas of Ohio, Inc., and Consumers Gas Cooperative*, Case No. 08-740-GA-ATR, Finding and Order (Sept. 23, 2009), ¶ 9; *In re Northern Industrial Energy Development, Inc. and Knox Energy Cooperative Association, Inc.*, Case No. 05-1267-GA-ATR, Finding and Order (Dec. 14, 2005), ¶ 11; *In re Ludlow Natural Gas Company, LLC, Utility Pipeline, Ltd and Knox Energy Cooperative Association*, Case No. 17-1785-GA-ATR, Finding and Order (Oct. 4, 2017), ¶ 26.
[43] *Id.*
[44] Joint Application, Exhibit E.

C. Knox has failed to show that it has the requisite managerial, technical, and financial abilities to ensure uninterrupted and adequate gas service to existing customers.

As explained above, the Commission has traditionally examined whether regulatory approval of the proposed transaction is reasonable, consistent with public interest, and will continue to allow customers to receive uninterrupted and adequate service, usually through an analysis of the proposed transferee's financial, technical, and managerial abilities.[45] Here, Joint Applicants have failed to demonstrate that Knox (the transferee) has the financial, technical, and managerial wherewithal to provide uninterrupted and adequate service to existing Cobra customers if the Transaction is approved.

Despite being a relatively young cooperative, Knox has refused to provide information showing how its acquisitions have impacted its members. According to UPL, Knox's growth has been spurred by the capital and management expertise provided by UPL. However, contrary to its own claims, Knox's growth is not "organic" in terms of expanding service to customers in areas that regulated utilities refuse to serve. Instead, according to its website,[46] Knox has simply acquired existing gas distribution systems in West Portsmouth, Ohio; Caldwell, Ohio; Claysville, Pennsylvania; Columbiana County, Ohio; Kane, Pennsylvania; and existing systems belonging to Northern Industrial Energy Development, Inc, throughout Ohio.[47] Unfortunately, despite numerous discovery requests to inquire about these acquisitions and their impact on customers, Knox has refused to provide any responsive information.[48]

---

[45] *In re Eastern Natural Gas Company and Village Energy Cooperative Association, Inc.*, Case No. 18-369-GA-ATR, Finding and Order (Sept. 23, 2020), ¶ 17.
[46] Utility Pipeline, Learn More About Knox Energy Co-Op History and Timeline, (Aug. 17, 2021, 1:11 PM), https://www.utilitypipelineltd.com/service-providers/knox-energy/more-about-knox-energy.
[47] *Id.*
[48] Knox and UPL's Response to NEO's First Set of Discovery Requests, Response to Interrogatory Nos. 5, 11.

Plus, Knox has not demonstrated whether it is financially capable of making the required payments to UPL or whether it will be dependent on Knox members (including current Cobra customers) to do so. Knox has refused to provide any of its financial statements to allow the Commission to evaluate whether Knox is financially capable of operating Cobra.[49] Instead, Joint Applicants have generically indicated that "the volumetric charge assessed to Knox members is intended, but not guaranteed, to compensate UPL for its capital expenditures over time."[50] And as discussed previously, UPL and Knox have also stated that UPL will be providing "financing" but they refuse to explain what that financing would be or how it will be collected or recovered from customers.[51] UPL and Knox have also refused to provide any data showing the amounts currently owed by Knox to UPL.[52]

All of this is deeply troubling in light of the fact that Knox will rely heavily on UPL's experience for the technical, financial, and managerial skills to operate the Assets. On its own, Knox makes no demonstration – other than its length of operation and number of existing customers – that it has the managerial, financial, or technical ability to maintain and operate the Assets by itself. This is particularly worrisome should the term of the contractual arrangement between UPL and Knox terminate or otherwise expire, leaving Knox to operate an intrastate transmission pipeline system that serves thousands of customers in Ohio without the requisite technical, financial, or managerial capacity.[53]

[49] Knox and UPL's Response to NEO's First Set of Discovery Requests, Response to Request for Production No. 14.
[50] Knox and UPL's Response to NEO's First Set of Discovery Requests, Response to Interrogatory No. 17.
[51] Knox and UPL's Response to NEO's First Set of Discovery Requests, Response to Interrogatory No. 21, Request for Production No. 8.
[52] Knox and UPL's Response to NEO's First Set of Discovery Requests, Response to Request for Production No. 10.
[53] And with Knox and UPL adopting an obstructionist position, declining to provide basic contractual documents repeatedly referenced in the Application and supporting testimony, there is no way to ascertain the duration of the contract term or even whether, when or under what conditions the existing managerial contract between Knox and UPL may expire.

Also, UPL and Knox rely upon their existing management agreement in the Application as a justification for approving Knox's purchase of Cobra despite not having any experience operating an intrastate pipeline or having any employees with such experience.[54] But, again, UPL and Knox have declined to provide a copy of that management agreement for the Commission or any other party to review to determine if it is reasonable and in the public interest.[55]

Accordingly, the Application should be denied as it fails to demonstrate the requisite technical, managerial, and financial ability to ensure uninterrupted and adequate gas service to customers.

D. UPL's proposed assignment to Knox should be held to a higher standard than Cobra's proposed sale to UPL.

Because the Commission will not have jurisdiction over Knox once the Assets are transferred from UPL to Knox, the Commission should apply a greater standard of review to ensure that customers, whose ultimate rates from NEO are subject to Commission oversight, will not be harmed by the Transaction. Most gas merger transactions reviewed by the Commission result in the transferee still being subject to the Commission's jurisdiction.[56] In those instances, the Commission can be assured that no improper rates or terms of service will be adopted because the Commission would still retain regulatory oversight over the transferee after the proposed transaction is consummated. Despite that ongoing regulatory oversight, as discussed above in merger cases the Commission frequently imposes significant conditions on approval.

Here, however, if the Transaction is approved, the transferee (Knox) is exempt from Commission regulation (except for pipeline safety matters). As such, Transaction approval by the

[54] Joint Application, p. 11.
[55] Knox and UPL's Response to NEO's First Set of Discovery Requests, Response to Request for Production No. 2.
[56] *See, e.g., In re Transfer of Monongahela Power Company's Certified Territory*, Case No. 05-765-EL-UNC, Opinion and Order (Nov. 9, 2005), p. 30; *In re Joint Application of Northeast Ohio Natural Gas Corp.*, Case No. 19-1921-PL-ATR, Finding and Order (Dec. 4, 2019), p. 1; *In re Matter of the Joint Petition of West Ohio Gas Company and Columbia Gas of Ohio, Inc.,* Case No. 90-1492-GA-ATR, Finding and Order (Dec. 13, 1990), p. *1.

Commission will result in Cobra customers, and in NEO's service territory NEO's customers, no longer enjoying the full regulatory protections of the Commission. Given the severe consequences to Cobra's current customers should the Commission approve the Application, as proposed, the Commission should apply a heightened standard of review to ensure that thousands of Ohioans will not be harmed by the Transaction. As a matter of public policy, the Commission should refuse to allow for-profit entities like UPL to evade or circumvent Commission jurisdiction by assigning their interests to a cooperative as a shield from that jurisdiction.

E. The Commission is not forced to approve the Transaction to ensure thousands of customers do not lose service.

Throughout the Application, Joint Applicants paint a dire picture of what will happen if the Commission does not approve the Transaction on an expedited basis.[57] Joint Applicants also claim that the Transaction, as proposed in the Application, "represents the only viable alternative currently on offer for the continued, safe operation of the Systems."[58] Joint Applicants are mistaken. In fact, there is a backup bidder that is ready and willing to purchase the Assets from Cobra, albeit at a lower price. To dismiss the backup bidder as not being a "viable alternative" – without having any actual evidence to support such an assertion – is grossly unfair. While NEO appreciates the importance of this Transaction to the Joint Applicants, it is misleading and inaccurate to insist there are no viable alternatives available.

As another example, the Commission could approve Cobra's sale to UPL but reject UPL's subsequent assignment to Knox. In that circumstance, if UPL maintains Cobra as a regulated utility, then concerns surrounding the lack of regulatory protection from the Commission become

[57] Joint Application, p. 15.
[58] Joint Application, p. 18.

moot and if a rate increase is warranted the Commission can approve it on UPL's future application.

Further, Joint Applicants falsely claim that insufficient rates are to blame for Cobra's financial demise, and they even cite several Commission orders in support of that inaccurate contention.[59] For instance, Stephen G. Rigo, testifying on behalf of Cobra in this matter, blamed the Commission's imposition of insufficient rates as the cause of Cobra's bankruptcy.[60] In reality, what doomed Cobra was not the lack of revenue from artificially deflated rates; rather, Cobra's problems stem from the gross mismanagement and financial improprieties committed by its former majority owner, Mr. Richard Osborne, over the course of the last decade. The Commission recently affirmed as much in its Opinion and Order denying Cobra an emergency rate increase. In Case No. 18-1549-PL-AEM, the Commission determined that Cobra's financial downturn was the result of "a pattern of mismanagement and self-dealing by Cobra" and Mr. Osborne.[61] Specifically, the Commission found that Cobra had paid more than $1 million "in so-called management fees to Mr. Osborne's various corporate entities," "millions of dollars in so-called loans to Mr. Osborne or his various corporate entities," and "real estate taxes and insurance on the real properties now owned by Mr. Osborne's unregulated affiliates."[62] The Commission determined that Cobra owed more than $5 million in outstanding personal property and excise tax obligations, and Mr. Osborne, acting on behalf of Cobra, transferred at least three real estate properties to unregulated Osborne-affiliates for no consideration during the last several years.[63] As a result of the foregoing, the Commission determined that "it is clear that Cobra's own decisions

[59] Joint Application, p. 6.
[60] Direct Testimony of Stephen G. Rigo, 3:15–19.
[61] *In re the Matter of the Application of Cobra Pipeline Company, Ltd. For an Increase in its Rates and Charges,* Case No. 16-1725-PL-AIR, 18-1549-PL-AEM, Opinion and Order (September 11, 2019), ¶ 154.
[62] *Id.* at ¶ 152.
[63] *Id.*

over many years have been the primary cause of its financial problems."[64] In fact the Commission held that Cobra had a rate of return of 11.18% and that "Cobra's existing rates and charges are sufficient to provide the Company with adequate net annual compensation and return on its property used and useful in the provision of its services."[65] Yet the Joint Application and supporting testimony completely ignores this reality, pretending that Cobra's problems could be solved if it only had sufficient revenue to operate.[66]

In truth, the Commission can entertain a variety of options to assuage the legitimate concerns of NEO and other intervenors. The Commission can still ensure reasonable, adequate, and uninterrupted service to Cobra customers without proceeding with the Transaction as proposed by Joint Applicants.

III. CONCLUSION

For the foregoing reasons, NEO respectfully requests that the Commission reject the Application and the proposed Transaction on the basis that it is unreasonable, not in the public interest, and will not ensure adequate and uninterrupted service to captive customers. Alternatively, NEO respectfully requests that the Commission consider the transfer of Assets from UPL to Knox at a later date once more information about the Transaction has been provided to the Commission.

[64] *Id*. at ¶ 155.
[65] Id at ¶¶ 168, 172.
[66] Joint Application, p. 6.

Respectfully submitted,

s/ N. Trevor Alexander

N. Trevor Alexander (0080713)
Mark T. Keaney (0095318)
Sarah G. Siewe (0100690)
BENESCH, FRIEDLANDER, COPLAN & ARONOFF LLP
41 South High Street, Suite 2600
Columbus, Ohio 43215-6164
Telephone: 614.223.9300
Facsimile: 614.223.9330
Email: talexander@beneschlaw.com
mkeaney@beneschlaw.com
ssiewe@beneschlaw.com

Attorneys for Northeast Ohio Natural Gas Corp.

CERTIFICATE OF SERVICE

I certify that the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 20th day of August, 2021. The PUCO's e-filing system will electronically service notice of the filing of this document on counsel for all parties.

/s/ N. Trevor Alexander
N. Trevor Alexander (0080713)

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Joint Application of Utility Pipeline, Ltd., Cobra Pipeline Company, Ltd., and Knox Energy Cooperative Association, Inc. to Substitute Natural Gas Service and Transfer Assets to Customers	))))))	Case No. 21-0803-GA-ATR

RESPONSES OF KNOX ENERGY COOPERATIVE ASSOCIATION, INC., TO NORTHEAST OHIO NATURAL GAS CORP.'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

Knox Energy Cooperative Association, Inc. ("Knox") hereby submits the following responses to the First Set of Interrogatories and Requests for Production of Documents ("Discovery Requests") by proposed intervenor Northeast Ohio Natural Gas Corp. ("NEO").[1]

GENERAL OBJECTIONS

These General Objections are made in response to each Discovery Request, and are incorporated into each response provided below as if fully set forth therein:

1. Knox objects to each Discovery Request to the extent it calls for Knox to disclose attorney-client communications, attorney work product, or information and/or documents protected from disclosure by any other privilege or confidentiality protection provided by rule or law. Knox will not produce privileged or otherwise protected documents or information.

2. Knox objects to the instructions set forth in the Discovery Requests to the extent they seek to expand Knox's obligations under the applicable Ohio Administrative Code provisions. Knox will not follow or abide by any instructions that expand or alter Knox's obligations under

[1] NEO's Discovery Requests were captioned as containing requests for admission directed to Knox, but Knox has not received any such requests for admission.

the applicable Ohio Administrative Code provisions or applicable rulings by the Public Utilities Commission or the Supreme Court of Ohio.

3. Knox objects to the definitions set forth in the Discovery Requests to the extent they are vague, ambiguous, or inaccurate. Knox will only produce relevant, non-privileged documents responsive to the Discovery Requests, subject to any specific objections below, within the possession, custody or control of Knox.

4. Knox reserves the right to supplement or clarify all responses to the full extent permitted by the Ohio Administrative Code.

5. Knox objects to the Discovery Requests to the extent they seek disclosure of trade secrets, sensitive business records, competitive business information, financial information, or other confidential business information.

INTERROGATORIES

1. Please identify the "work" that will be needed "within the next twelve to eighteen months" on the infrastructure at issue as stated on page 17 of the Application.

RESPONSE:

Knox objects to this request as irrelevant and overbroad. Subject to and without waiving the foregoing objections, Knox states that it has not identified the specific projects that need to be performed on the Systems in the next twelve to eighteen months. Knox is aware that the age of the Systems and the general condition of the Systems will require capital expenditures.

2. Please identify the specific investments UPL and Knox intend to make in an effort to upgrade Cobra's infrastructure as indicated in the last paragraph of page 17 of the Application.

RESPONSE:

Knox objects to this request as irrelevant and overbroad. Subject to and without waiving the foregoing objections, Knox states that it has not identified the specific projects that need to be performed on the Systems in the next twelve to eighteen months. Knox is aware that the age of the Systems and the general condition of the Systems will require capital expenditures.

3. Has Knox reviewed the applicable rules and regulations to satisfy Federal Energy Regulatory Commission ("FERC") requirements that may be applicable to this transaction? If so, please describe the applicable requirements.

RESPONSE:

Knox objects to this request to the extent that it calls for information protected by the attorney-client privilege and the attorney work-product doctrine. Knox further objects to this request to the extent it calls for a legal conclusion.

4. Please identify any current Cobra customers who have expressed a desire to become part-owners or members of said proposed cooperative.

RESPONSE:

None.

5. Please describe the following parameters with regard to the assignment agreement between Knox and UPL:

a. The time period for which cooperative members will pay the fees associated with UPL's recoupment of its upfront capital expenditures;

b. The maximum amount cooperative members will pay in fees associated with UPL's recoupment of its upfront capital expenditures;

c. Any parameters in place to prevent overcompensation of UPL for recoupment of its upfront capital expenditures;

d. When and how current Cobra customers will be notified of the fees associated with UPL's recoupment of its upfront capital expenditures.

RESPONSE:

Knox objects to this request as irrelevant and overbroad. Subject to and without waiving the foregoing objections, Knox states that UPL and Knox are still negotiating the parameters of the assignment.

6. Please identify when the assignment agreement will go into effect relative to the point in time in which current Cobra customers will become members of the cooperative.

RESPONSE:

The assignment will go into effect before current Cobra customers apply to become members of Knox.

7. Page 5 of the Application states that "UPL is not purchasing or assuming certain transportation contracts between Cobra and a number of entities, including Northeast Ohio Natural Gas Corp." Please set forth the rates NEO will be charged immediately after the transaction to Knox if it is approved.

RESPONSE:

Knox states that such rates are to be determined by future negotiations with the relevant parties.

8. What rates does Knox believe are appropriate for other former Cobra customers after the Application is approved?

RESPONSE:

Knox objects to this request as irrelevant and seeking highly confidential business information. Answering further, Knox states that rates charged to former Cobra customers who wish to take service from the Cobra pipeline systems will be determined by future negotiations with the relevant parties.

9. If Knox has not yet determined what rate will be applied to former Cobra customers, how will Knox calculate or determine that rate?

RESPONSE:

Knox states that such rates will be determined by future negotiations with the relevant parties.

10. If the Application is approved, what is the process by which Knox will change rates or could change rates to customers in the future?

RESPONSE:

Knox objects to this request as irrelevant. Further answering, Knox assumes for purposes of this response that the term "customers" refers to Knox's members. Further, Knox will only respond to this request relating to those former Cobra customers who become Knox members. Subject to and without waiving the foregoing objections, Knox states that rate changes for former Cobra customers who become Knox members will be determined by bilateral negotiations.

11. How will existing customers of Knox be affected by this transaction?

RESPONSE:

Knox objects to this request as irrelevant. Subject to and without waiving the foregoing objections, Knox states that Knox does not have customers, as it is a member-owned cooperative. Assuming the term "customers" refers to Knox members, Knox states that natural gas service to Knox members will not be affected by the transaction, and further that the transaction could provide an opportunity for expanded service.

12. Identify:

(a) every utility or natural gas system acquired by Knox since its inception;

(b) the date of that acquisition;

(c) the regulatory body that approved that transaction (if any); and

(d) the case number in which the transaction was approved (if any).

RESPONSE:

Knox objects to this request as unduly burdensome, irrelevant, and overbroad.

13. Will the former Cobra system customers be considered their own cooperative entity, or will they be included with the current Knox customers?

RESPONSE:

Former Cobra customers who wish to receive service from the Cobra pipeline system will have the opportunity to apply to join Knox's membership, not a separate cooperative entity, and negotiate a service agreement with Knox.

14. Are there any current Knox customers who are being served from the Cobra system other than the 2,760 customers referenced on page 3 of the Application?

RESPONSE:

Knox states that there are no other Knox members currently served directly off of Cobra's systems.

15. What recourse will Cobra customers have if there is a disagreement on pricing, billing, or other services provided by Knox?

RESPONSE:

Knox objects to this request as unduly burdensome and overbroad. Further, Knox is unable to respond to a hypothetical question based on contracts that have yet to be negotiated.

16. How is the amount paid by Knox to UPL currently calculated?

RESPONSE:

Knox objects to this request as vague, ambiguous, irrelevant, and overbroad. Subject to and without waiving the foregoing objections, Knox refers to page seventeen of the Joint Application and page six of Mr. Duckworth's testimony on behalf of UPL, which indicate that UPL is paid through a per-meter fee and a volumetric charge.

17. What is the formula by which Knox will compensate UPL for the acquisition, maintenance, and capital improvements to the Assets?

RESPONSE:

Knox objects to this request as vague, ambiguous, and irrelevant. Subject to and without waiving the foregoing objections, Knox refers to page six of Mr. Duckworth's testimony on behalf of UPL, which indicates that the volumetric charge assessed to Knox members is intended, but not guaranteed, to compensate UPL for its capital expenditures over time.

18. How are UPL costs allocated to Knox Customers?

RESPONSE:

Knox objects to this request as irrelevant. Subject to and without waiving the foregoing objections, Knox states that it is a member-owned cooperative and does not have customers. Assuming the term "Customers" refers to Knox's members, UPL's costs are not allocated to individual Knox member.

19. What are the terms of the "new transportation contracts with NEO" referenced on page 9 of the Application?

RESPONSE:

Knox states that such rates are to be determined by future negotiations with the relevant parties.

20. Does Knox currently operate any intrastate transmission natural gas pipelines?

RESPONSE:

No.

21. What is the UPL "financing" that will be provided to Knox as indicated on page 12 of the Application?

RESPONSE:

The financing is in the form of UPL's responsibility for the purchase price for the Systems and the capital expenditures and maintenance thereof.

22. On page 9 of the Application it states, "[i]t is contemplated that Knox will receive an assignment of the Systems directly from Cobra at the closing of the transaction." However, at page 11, the Application states "Moreover, the acquisition of the Systems by UPL and their subsequent assignment to Knox permits Knox to utilize UPL's financing. . ." Will UPL acquire the system and then assign it to Knox, or will the system be assigned directly to Knox?

RESPONSE:

The assignment will take place immediately after the acquisition of the Systems.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Produce copies of documents used or otherwise relied on to prepare your responses to the foregoing Interrogatories.

RESPONSE:

Knox states that there are no responsive documents.

2. Produce all contracts between Knox and UPL related to the Application, purchase, or operation of the Assets.

RESPONSE:

Knox states that there are no responsive documents, with the exception of an existing management agreement between Knox and UPL. Knox objects to the production of that agreement to NEO because NEO lacks any basis to use this proceeding to obtain highly sensitive and confidential information about Knox's business, particularly because that information is not relevant to NEO's interests in this case.

3. Produce all schedules showing amounts currently owed by Knox to UPL.

RESPONSE:

Knox objects to this request as overbroad, unduly burdensome, and irrelevant.

4. Produce all documents which set the "limits on the extent to which UPL can increase its management fees. These limits extend to both the fixed per-meter fee and volumetric adder fee that UPL charges, and increases to both types of charges are subject to contractual caps." *See* page 17 of the Application.

RESPONSE:

Knox objects to this request as overbroad and irrelevant. A management agreement between Knox and UPL will govern the limits referred to in the Application. Knox objects to the

production of that agreement to NEO because NEO lacks any basis to use this proceeding to obtain highly sensitive and confidential information about Knox's business, particularly because that information is not relevant to NEO's interests in this case.

5. Produce Knox's most recent cost of service study.

RESPONSE:

Knox objects to this request as vague and ambiguous to the extent that "cost of service study" is undefined. Knox further objects to this request as overbroad and irrelevant.

6. Produce Knox's terms and conditions of service that would apply to NEO if NEO and Knox are not able to come to an agreement on a new contract.

RESPONSE:

Any potential agreement is subject to future negotiation with NEO and other entities seeking transportation contracts with Knox or UPL. Such agreements do not yet exist, and they will be developed through negotiations with any Cobra customers who wish to apply to receive membership and service.

7. Produce Knox's current rate schedule for Ohio customers.

RESPONSE:

Knox objects to this request as overbroad, unduly burdensome, and irrelevant.

8. Produce any agreements between Knox and UPL that govern capital expenditures made by UPL.

RESPONSE:

Knox objects to this request as overbroad and irrelevant. A management agreement between Knox and UPL will govern capital expenditures made by UPL. Knox objects to the production of that agreement to NEO because NEO lacks any basis to use this proceeding to obtain

highly sensitive and confidential information about Knox's operations, particularly because that information is not relevant to NEO's interests in this case.

9. Produce any financing agreements between Knox and UPL, including without limitation any agreement related to the acquisition of the Assets.

RESPONSE:

Knox states that there are no responsive documents.

10. Produce any presentation(s) to the Knox Board of Trustees regarding the Assets, including without limitation the presentation referenced on page 13 of the Application.

RESPONSE:

Knox states that there are no responsive documents. Presentations made to the Knox Board have been oral.

11. Produce the "new transportation contracts with NEO" referenced on page 9 of the Application.

RESPONSE:

Knox states that such contracts are to be determined by future negotiations with the relevant parties, and such contract will be in NEO's possession if and once completed.

12. Produce the Knox "code of regulations" referenced on page 11 of the Application.

RESPONSE:

Knox Rules and Regulations are available on Knox's website.

13. Produce Knox's transmission rate schedule.

RESPONSE:

Knox objects to this request as overbroad and irrelevant. Subject to and without waiving the forgoing objections, Knox states that such schedules do not exist.

14. Produce a copy of Knox's most recent balance sheet, income statement, and statement of cash flows.

RESPONSE:

Knox objects to this request as overbroad and irrelevant.

15. Produce a copy of Knox's management agreement with UPL referenced on page 12 of the Application and the "long-term management agreement between Knox and UPL" as stated in Renee McDaniel's testimony on page 4, lines 9-11, if the two agreements are different or have not already been produced.

RESPONSE:

Knox objects to this request as overbroad and irrelevant. Knox objects to the production of its management agreement with UPL to NEO because NEO lacks any basis to use this proceeding to obtain highly sensitive and confidential information about Knox's operations, particularly because that information is not relevant to NEO's interests in this case.

16. Produce working copies of all studies and/or models used or otherwise relied upon in the development of the Application.

RESPONSE:

Knox states that there are no responsive documents.

17. Produce copies of all workpapers used or otherwise relied upon in the preparation of filing the Application, including but not limited to any workpapers regarding rate design and rate impact workpapers. As part of this response, please provide working Excel documents with formulas included.

RESPONSE:

Knox states that there are no responsive documents. To the extent "workpapers" encompass drafts prepared by Knox's counsel, Knox objects to the production of such privileged information.

18. Produce copies of any and all other contracts or agreements between UPL and Knox regarding the management and operation of the Assets, including but not limited to documents reflecting the "as-requested maintenance and repair services to portions of Cobra's systems" UPL has provided to Knox as stated on page 15 of the Application.

RESPONSE:

Knox objects to this request as overbroad and irrelevant. Subject to these objections, Knox states that there are no contracts yet in existence regarding the management and operation of the "Assets."

19. Produce copies of all proposed rate schedules for the current Cobra customers.

RESPONSE:

Knox states that to the extent any current Cobra customers wish to apply for membership with Knox and receive service from the Cobra pipeline systems, UPL and Knox will negotiate those rates with those Cobra customers on a case-by-case basis. However, Knox objects to the production to NEO of any private agreements reached with any other current Cobra customers as irrelevant and an improper attempt to obtain highly sensitive and competitive information.

20. Produce copies of all e-mails, letters, memos, and other forms of communication between Knox and UPL related to the Assets.

RESPONSE:

UPL has principally communicated with Knox via oral and/or telephonic communications. Knox is continuing to verify whether non-privileged written communications exist and will update its responses accordingly.

21. Produce a copy of the terms of service under which Knox will provide service to NEO.

RESPONSE:

Knox states that such terms of service are to be determined by future negotiations with NEO, and such terms will be in NEO's possession if and once completed.

Dated: August 11, 2021

Respectfully submitted,

/s/ David F. Proaño
David F. Proaño (0078838), Counsel of Record
dproano@bakerlaw.com
Taylor Thompson (0098113)
tathompson@bakerlaw.com
BAKER & HOSTETLER LLP
127 Public Sq., Suite 2000
Cleveland, Ohio 44114
Phone: 216-861-7834
Fax: 216-696-0740

Counsel for Utility Pipeline, Ltd., and Knox Energy Cooperative Association, Inc

CERTIFICATE OF SERVICE

I certify that the foregoing Responses to the First Set of Interrogatories and Requests for Production of Documents were served on the following parties on August 11, 2021, via email:

Werner Margard
werner.margard@OhioAGO.gov

Thomas W. Coffey
tcoffey@tcoffeylaw.com
Counsel for Cobra Pipeline Company, Ltd.

N. Trevor Alexander
talexander@beneschlaw.com
Sarah G. Siewe
ssiewe@beneschlaw.com
Counsel for Northeast Ohio Natural Gas Corp.

Kate E. Russell-Bedinghaus
kbedinghaus@standenergy.com
Counsel for Stand Energy Corporation

/s/ David F. Proaño
David F. Proaño (0078838), Counsel of Record
dproano@bakerlaw.com

Counsel for Utility Pipeline, Ltd., and Knox Energy Cooperative Association, Inc.

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Joint Application of Utility Pipeline, Ltd., Cobra Pipeline Company, Ltd., and Knox Energy Cooperative Association, Inc. to Substitute Natural Gas Service and Transfer Assets to Customers	))))))	Case No. 21-0803-GA-ATR

RESPONSES OF UTILITY PIPELINE, LTD. TO NORTHEAST OHIO NATURAL GAS CORP.'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

Utility Pipeline, Ltd. ("UPL") hereby submits the following responses to the First Set of Interrogatories and Requests for Production of Documents ("Discovery Requests") by proposed intervenor Northeast Ohio Natural Gas Corp. ("NEO").[1]

GENERAL OBJECTIONS

These General Objections are made in response to each Discovery Request, and are incorporated into each response provided below as if fully set forth therein:

1. UPL objects to each Discovery Request to the extent it calls for UPL to disclose attorney-client communications, attorney work product, or information and/or documents protected from disclosure by any other privilege or confidentiality protection provided by rule or law. UPL will not produce privileged or otherwise protected documents or information.

2. UPL objects to the instructions set forth in the Discovery Requests to the extent they seek to expand UPL's obligations under the applicable Ohio Administrative Code provisions. UPL will not follow or abide by any instructions that expand or alter UPL's obligations under the

[1] UPL previously served responses to NEO's first set of requests for admission on August 9, 2021.

applicable Ohio Administrative Code provisions or applicable rulings by the Public Utilities Commission or the Supreme Court of Ohio.

3. UPL objects to the definitions set forth in the Discovery Requests to the extent they are vague, ambiguous, or inaccurate. UPL will only produce relevant, non-privileged documents responsive to the Discovery Requests, subject to any specific objections below, within the possession, custody or control of UPL.

4. UPL reserves the right to supplement or clarify all responses to the full extent permitted by the Ohio Administrative Code.

5. UPL objects to the Discovery Requests to the extent they seek disclosure of trade secrets, sensitive business records, competitive business information, financial information, or other confidential business information.

INTERROGATORIES

1. Please identify the "work" that will be needed "within the next twelve to eighteen months" on the infrastructure at issue as stated on page 17 of the Application.

RESPONSE:

UPL objects to this request as irrelevant and overbroad. Subject to and without waiving the foregoing objections, UPL states that it has not identified the specific projects that need to be performed on the Systems in the next twelve to eighteen months. UPL is aware that the age of the Systems and the general condition of the Systems will require capital expenditures.

2. Please identify the specific investments UPL and Knox intend to make in an effort to upgrade Cobra's infrastructure as indicated in the last paragraph of page 17 of the Application.

RESPONSE:

UPL objects to this request as irrelevant and overbroad. Subject to and without waiving the foregoing objections, UPL states that it has not identified the specific projects that need to be performed on the Systems in the next twelve to eighteen months. UPL is aware that the age of the Systems and the general condition of the Systems will require capital expenditures.

Has UPL reviewed the applicable rules and regulations to satisfy Federal Energy Regulatory Commission ("FERC") requirements that may be applicable to this transaction? If so, please describe the applicable requirements.

RESPONSE:

UPL objects to this request to the extent that it calls for information protected by the attorney-client privilege and the attorney work-product doctrine. UPL further objects to this request to the extent it calls for a legal conclusion.

3. Please identify any current Cobra customers who have expressed a desire to become part-owners or members of said proposed cooperative.

RESPONSE:

None.

4. Please describe the following parameters with regard to the assignment agreement between Knox and UPL:

a. The time period for which cooperative members will pay the fees associated with UPL's recoupment of its upfront capital expenditures;

b. The maximum amount cooperative members will pay in fees associated with UPL's recoupment of its upfront capital expenditures;

c. Any parameters in place to prevent overcompensation of UPL for recoupment of its upfront capital expenditures;

d. When and how current Cobra customers will be notified of the fees associated with UPL's recoupment of its upfront capital expenditures.

RESPONSE:

UPL objects to this request as irrelevant and overbroad. Subject to and without waiving the foregoing objections, UPL states that UPL and Knox are still negotiating the parameters of the assignment.

5. Please identify when the assignment agreement will go into effect relative to the point in time in which current Cobra customers will become members of the cooperative.

RESPONSE:

The assignment will go into effect before current Cobra customers apply to become members of Knox.

6. Page 5 of the Application states that "UPL is not purchasing or assuming certain transportation contracts between Cobra and a number of entities, including Northeast Ohio Natural Gas Corp." Please set forth the rates NEO will be charged immediately after the transaction to Knox if it is approved.

RESPONSE:

UPL states that such rates are to be determined by future negotiations with the relevant parties.

7. Identify:

(a) every utility or natural gas system acquired by UPL since its inception;

(b) the date of that acquisition;

(c) the regulatory body which approved that transaction (if any); and

(d) the case number in which the transaction was approved (if any).

RESPONSE:

UPL objects to this request as unduly burdensome, irrelevant, and overbroad.

8. How is the amount paid by Knox to UPL currently calculated?

RESPONSE:

UPL objects to this request as vague, ambiguous, irrelevant and overbroad. Subject to and without waiving the foregoing objections, UPL refers to page seventeen of the Joint Application and page six of Mr. Duckworth's testimony on behalf of UPL, which indicate that UPL is paid through a per-meter fee and a volumetric charge.

9. What is the formula by which Knox will compensate UPL for the acquisition, maintenance, and capital improvements to the Assets?

RESPONSE:

UPL objects to this request as vague, ambiguous and irrelevant. Subject to and without waiving the foregoing objections, UPL refers to page six of Mr. Duckworth's testimony on behalf of UPL, which indicates that the volumetric charge assessed to Knox members is intended, but not guaranteed, to compensate UPL for its capital expenditures over time.

10. How will existing customers of UPL be affected by this transaction?

RESPONSE:

UPL objects to this request as irrelevant and vague. Subject to and without waiving the foregoing objections, UPL states that UPL does not have direct end-user customers, as UPL is a management company. To the extent that UPL has customers, they will be unaffected by the transaction.

11. What recourse will Cobra customers have if there is a disagreement on pricing, billing, or other services provided by UPL?

RESPONSE:

UPL objects to this request as unduly burdensome and overbroad. Further, UPL is unable to respond to a hypothetical question based on contracts that have yet to be negotiated.

12. What are the terms of the "new transportation contracts with NEO" referenced on page 9 of the Application?

RESPONSE:

UPL states that such terms will be the subject of negotiations with NEO.

13. Does UPL currently operate any intrastate transmission natural gas pipelines?

RESPONSE:

Yes.

14. What is the UPL "financing" that will be provided to Knox as indicated on page 12 of the Application?

RESPONSE:

The financing is in the form of UPL's responsibility for the purchase price for the Systems and the capital expenditures and maintenance thereof.

15. On page 9 of the Application it states, "[i]t is contemplated that Knox will receive an assignment of the Systems directly from Cobra at the closing of the transaction." However, at page 11, the Application states "Moreover, the acquisition of the Systems by UPL and their subsequent assignment to Knox permits Knox to utilize UPL's financing. . ." Will UPL acquire the system and then assign it to Knox, or will the system be assigned directly to Knox?

RESPONSE:

The assignment will take place immediately after the acquisition of the Systems.

16. If your response to Request for Admission #1 is not an unqualified admission, please explain here the need for qualification or denial.

RESPONSE:

See UPL's response to Request for Admission #1.

17. If your response to Request for Admission #2 is not an unqualified admission, please explain here the need for qualification or denial.

RESPONSE:

See UPL's response to Request for Admission #2.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Produce copies of documents used or otherwise relied on to prepare your responses to the foregoing Interrogatories.

RESPONSE:

UPL states that there are no responsive documents.

2. Produce all contracts between Knox and UPL related to the Application, purchase, or operation of the Assets.

RESPONSE:

UPL states that there are no responsive documents, with the exception of an existing management agreement between Knox and UPL. UPL objects to the production of that agreement to NEO because NEO is a competitor of UPL's subsidiaries, and NEO lacks any basis to use this proceeding to obtain highly sensitive and confidential information about UPL's business, particularly because that information is not relevant to NEO's interests in this case.

3. Produce a current list of all pipelines, cooperatives, utilities, or other natural gas systems in which UPL currently has an ownership interest.

RESPONSE:

UPL objects to this request as overbroad, unduly burdensome, and irrelevant.

4. Produce a current list all pipelines, cooperatives, utilities, or other natural gas systems UPL currently manages.

RESPONSE:

UPL objects to this request as overbroad, unduly burdensome, and irrelevant.

5. Produce all documents setting forth the management fees associated with all pipelines, cooperatives, utilities, or other natural gas systems UPL currently manages.

RESPONSE:

UPL objects to this request as overbroad, unduly burdensome, and irrelevant.

6. Produce all schedules showing amounts currently owed by Knox to UPL.

RESPONSE:

UPL objects to this request as overbroad, unduly burdensome, and irrelevant.

7. Produce all documents which set the "limits on the extent to which UPL can increase its management fees. These limits extend to both the fixed per-meter fee and volumetric adder fee that UPL charges, and increases to both types of charges are subject to contractual caps." *See* page 17 of the Application.

RESPONSE:

UPL objects to this request as overbroad and irrelevant. An existing management agreement between Knox and UPL will govern the limits referred to in the Application. UPL objects to the production of that agreement to NEO because NEO lacks any basis to use this proceeding to obtain highly sensitive and confidential information about UPL's business, particularly because that information is not relevant to NEO's interests in this case.UPL states that there is not yet any agreement with Knox with regard to the management of or repairs to Cobra's Systems, as such Systems are not yet owned by Knox.

8. Produce any agreements between Knox and UPL which govern capital expenditures made by UPL.

RESPONSE:

UPL objects to this request as overbroad and irrelevant. A management agreement between Knox and UPL will govern capital expenditures made by UPL. UPL objects to the production of that agreement to NEO because NEO lacks any basis to use this proceeding to obtain

highly sensitive and confidential information about UPL's business, particularly because that information is not relevant to NEO's interests in this case. UPL states that there is not yet any agreement with Knox regard to the management of or repairs to Cobra's Systems, as such Systems are not yet owned by Knox.

9. Produce any financing agreements between Knox and UPL, including without limitation any agreement related to the acquisition of the Assets.

RESPONSE:

UPL states that there are no responsive documents.

10. Produce any presentation(s) to the Knox Board of Trustees regarding the Assets, including without limitation the presentation referenced on page 13 of the Application.

RESPONSE:

UPL states that there are no responsive documents. Presentations made to the Knox Board have been oral.

11. Produce the "new transportation contracts with NEO" referenced on page 9 of the Application.

RESPONSE:

UPL states that such contracts are to be determined by future negotiations with the relevant parties, and such contract will be in NEO's possession if and once completed.

12. Produce a copy of Knox's management agreement with UPL referenced on page 12 of the Application and the "long-term management agreement between Knox and UPL" as stated in Renee McDaniel's testimony on page 4, lines 9-11, if the two agreements are different or have not already been produced.

RESPONSE:

UPL objects to this request as overbroad and irrelevant. UPL objects to the production of its management agreement with Knox to NEO because NEO lacks any basis to use this proceeding to obtain highly sensitive and confidential information about UPL's business, particularly because that information is not relevant to NEO's interests in this case.

13. Produce working copies of all studies and/or models used or otherwise relied upon in the development of the Application.

RESPONSE:

UPL states that there are no responsive documents.

14. Produce copies of all workpapers used or otherwise relied upon in the preparation of filing the Application, including but not limited to any workpapers regarding rate design and rate impact workpapers. As part of this response, please provide working Excel documents with formulas included.

RESPONSE:

UPL states that there are no responsive documents. To the extent "workpapers" encompass drafts prepared by UPL's counsel, UPL objects to the production of such privileged information.

15. Produce copies of any and all other contracts or agreements between UPL and Knox regarding the management and operation of the Assets, including but not limited to documents reflecting the "as-requested maintenance and repair services to portions of Cobra's systems" UPL has provided to Knox as stated on page 15 of the Application.

RESPONSE:

UPL objects to this request as overbroad and irrelevant. Subject to these objections, UPL states that there are no contracts yet in existence regarding the management and operation of the "Assets."

16. Produce copies of all proposed rate schedules for the current Cobra customers.

RESPONSE:

UPL states that to the extent any current Cobra customers wish to apply for membership with Knox and receive service from the Cobra pipeline systems, UPL and Knox will negotiate those rates with those Cobra customers on a case-by-case basis. However, UPL objects to the production to NEO of any private agreements reached with any other current Cobra customers as irrelevant and an improper attempt to obtain highly sensitive and competitive information.

17. Produce copies of all e-mails, letters, memos, and other forms of communication between Knox and UPL related to the Assets.

RESPONSE:

UPL has principally communicated with Knox via oral and/or telephonic communications. UPL is continuing to verify whether non-privileged written communications exist and will update its responses accordingly.

Dated: August 11, 2021

Respectfully submitted,

/s/ David F. Proaño

David F. Proaño (0078838), Counsel of Record
dproano@bakerlaw.com
Taylor Thompson (0098113)
tathompson@bakerlaw.com
BAKER & HOSTETLER LLP
127 Public Sq., Suite 2000
Cleveland, Ohio 44114
Phone: 216-861-7834
Fax: 216-696-0740

Counsel for Utility Pipeline, Ltd., and Knox Energy Cooperative Association, Inc.

CERTIFICATE OF SERVICE

I certify that the foregoing Responses to the First Set of Interrogatories, Requests for Production of Documents, and Requests for Admission were served on the following parties on August 11, 2021, via email:

Werner Margard
werner.margard@OhioAGO.gov

Thomas W. Coffey
tcoffey@tcoffeylaw.com
Counsel for Cobra Pipeline Company, Ltd.

N. Trevor Alexander
talexander@beneschlaw.com
Sarah G. Siewe
ssiewe@beneschlaw.com
Counsel for Northeast Ohio Natural Gas Corp.

Kate E. Russell-Bedinghaus
kbedinghaus@standenergy.com
Counsel for Stand Energy Corporation

/s/ David F. Proaño
David F. Proaño (0078838), Counsel of Record
dproano@bakerlaw.com

Counsel for Utility Pipeline, Ltd., and Knox Energy Cooperative Association, Inc.

Summary: Comments Initial Comments electronically filed by Mr. N. Trevor Alexander on behalf of Northeast Ohio Natural Gas Corp.